IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.309 OF 2007

1. Vinayak Shree Real Estate (P) Ltd., A company, incorporated under the Companies Act, 1956 (Act 1 of 1956) having its registered Office at 8/226, Third Floor, Arya Nagar, represented herein by its Director, Shri Anirudh Poddar, aged about 41 years, Son of Shri Radheshyam Poddar, residing at Mungul, Colva, Salcete - Goa.

2. Shri Anirudh Poddar, aged about 41 years, Son of Radheshyam Poddar, residing at Mungul, Colva, Salcete - Goa. ..Petitioners

Vs.

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim - Goa.

2. Chief Town Planner, Town & Country Planning Department, Government of Goa, having office at Patto, Panaji - Goa. ..Respondents

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Shri R.G.Ramani, Advocate for the Petitioners.

Shri S.S.Kantak, Advocate General, with Ms Rakhi Chodankar, Additional Government Advocate, for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
R.S.MOHITE, JJ

DATED : 24TH AUGUST, 2007

P.C. (R.M.S.KHANDEPARKAR, J)

1. Heard. The petitioners challenge the vires of Section 17C enacted to Goa Town and Country Planning Act, 1974 and the notification dated 7th February, 2007 issued by the Chief Town Planner in terms of the decision of the Government under Sub-section (1) of the said section.

2. The petitioner No.1 is a Private Limited Company and the petitioner No.2 is the Director of the said Company. The petitioners under the two Sale Deeds dated 9th March, 2006 purchased the properties bearing Survey No.22/3 admeasuring 17150 sq. metres and Survey No.22/2 admeasuring 30150 sq. metres and Survey No.58/19 admeasuring 36525 sq.metres situate in the Village Adnem, Taluka-Quepem, District South Goa, for consideration of the sum of Rs.29,40,000/-. The petitioners applied for Conversion Sanad on 22nd September, 2006 and applied to the Village Panchayat for licence for construction on 6th October, 2006. The authorities, however, did not grant either permission for Conversion Sanad or for construction. Meanwhile, the Draft Regional Plan 2011 was published

on 7th July, 2004, Revised Draft Plan was published on 21st November, 2005 and the Revised Draft Plan approved by the Government was notified on 10th August, 2006.

3. On 5th February, 2007, the Goa Town and Country Planning (Amendment) Ordinance, 2007 came to be promulgated by Goa Government whereby Section 17C was sought to be inserted in the said Act providing for the withdrawal of Revised Regional Plan. On 10th May, 2007, notification came to be published regarding incorporation of Section 17C to the said Act pursuant to the resolution to the effect that by Legislative Assembly by Goa on 8th March, 2007 and assented by the Governor on 5th May, 2007. The provisions of law incorporated as Section 17C to the said Act read thus:-

"17-C. WITHDRAWAL OF REVISED REGIONAL PLAN.-

(1) Notwithstanding anything contained in section 17, if, at any time after a revised regional plan has been notified/published in the Official Gazette (hereinafter in this section referred to as the "revised regional

plan"), the Government is of the opinion that such revised regional plan is required to be withdrawn, the Government may direct the Chief Town Planner to withdraw the operation of the revised regional plan from such date, either prospective or retrospective, as the Government deems fit, and in its entirety or in part, as the case may be, and undertake the revision of the regional plan as existing immediately before the revised regional plan (hereinafter in this section referred to as the "existing regional plan"), in its entirety or in part, as the case may be, and thereupon the foregoing provisions of this Act relating to the preparation of the regional plan shall, as far as may be, apply to the revision of a regional plan under this section.

2. The Chief Town Planner shall, thereafter, withdraw the operation of the revised regional plan from the

date as directed by the Government, in entirety or in part, as the case may be, by publication of a notification in the Official Gazette and in two local newspapers.

3. On and from the date of withdrawal of the revised regional plan by publication of the notification under the provisions of sub-section (2) of this section, all development programmes undertaken by any Department of the Government or by public and private institutions or by any other person shall conform to the provisions of the existing regional plan."

4. In pursuance of the said power under Section 17C of the said Act, the notification dated 7th February, 2007 came to be issued by the Chief Town Planner announcing the withdrawal of the Regional Plan 2011 pursuant to the directions given in that regard by the Government upon its decision under sub-section (1) of Section 17C of the said Act.

5. It is the case of the petitioners that the Section 17C purports to vest in the Government unfettered and unguided discretion in the matter of withdrawal of the revised Regional Plan and there are guidelines either in Section 17C or any other part of the said Act for exercise of such discretion, and therefore, Section 17C is liable to be declared as violative of Article 14 of the Constitution of India. Secondly that the respondents in the Writ Petition No.569 of 2006 before this Court had justified the issuance of Notification of Regional Plan 2011 and in the affidavit dated 11th December, 2006 they had justified the validity of the said Regional Plan 2011 and in those circumstances, apart from mere public agitations, there exists no circumstances whatsoever between 11th December, 2006 and 7th February, 2007 on the basis of which the respondents could have withdrawn the Regional Plan 2011 in its entirety, and therefore, the impugned notification is illegal, arbitrary and unconstitutional. Thirdly that the petitioners relying upon the representation held out by the respondents vide Regional Plan 2011 had irretrievably altered their position in the sense that in terms of the Regional Plan 2011, the petitioners had applied for development of their properties, and therefore, the respondents be estopped from

withdrawing the Regional Plan 2011 and hence the Notification dated 7th February, 2007 is liable to be struck down on the touchstone of the doctrine of promissory estoppel. And fourthly that the impugned provision of law and the impugned notification issued in exercise of powers under the said provisions of law constitute unreasonable restrictions upon the petitioners which are otherwise granted under Article 19(1)(g) of the Constitution inasmuch as that in view of withdrawal of the Regional Plan 2011, the petitioners are not able to develop their properties which they would have otherwise entitled to develop in terms of the said Regional Plan 2011.

6. While assailing the impugned statutory provisions and the impugned notification, the learned advocate appearing for the petitioners submitted that the notification dated 7th February, 2007 purportedly issued in exercise of powers under Section 17(2) nowhere mentions about the public purpose or public interest having been considered before issuing the said notification. He further submitted that such power can only be exercised in public interest and since that is not revealed from the notification, on the face of it, it is necessary for the Government to explain that such public interest was in fact

considered. He further submitted that the provisions of law comprised under the said Act provide elaborate procedure to be followed before finalising the regional plan and any such regional plan prepared after due compliance of the proscribed procedure cannot be allowed to be withdrawn arbitrarily and any provision incorporated under the said Act gives such uncontrolled and unforced under any guidelines cannot stand the test of constitutional requirement and it would rather amount to violation of Article 14 read with Article 19(1)(g) of the Constitution of India and Article 300A of the Constitution. Drawing attention to the affidavit dated 11th December, 2006 which was filed by the Chief Town Planner of Goa Government in Writ Petition No.569 of 2006, he submitted that the said writ petition was filed challenging the regional plan 2011 and in answer to the said challenge, the respondents had not only justified Regional Plan 2011 but had highlighted the necessity which led to finalisation of the said plan in the manner it was finalised and approved by the Government. Specific attention was drawn to the paragraphs 22, 23, 25, 67 and 96 of the said affidavit while contending that once the respondents having justified the action in relation to the Regional Plan 2011 on 11th December, 2006 apart from agitations by Goa Bachav Abhiyan,

there was no justification or reason for withdrawal of the said Regional Plan. According to the learned counsel, there is no material before the Court to counter the claim made by the Government itself in its earlier affidavit wherein the Government had justified the finalisation of the Regional Plan 2011 and to explain what could have been the reason for change of opinion in that regard within three months so as to justify withdrawal of the said plan. He further submitted that based on the representation held to the petitioners under the Regional Plan 2011, the petitioners applied for Conversion Sanad as well as licence for construction. However, with the sudden withdrawal of the said plan, the petitioners are left high and dry. According to learned counsel, the provisions of law under Section 17C(1) gives uncontrolled and unguided powers to withdraw the plan, and therefore, the provisions granting such unguided, unbridled, uncontrolled powers cannot be sustained and it should be quashed. Reliance is sought to be placed in the decisions in the matters of **Smt.Maneka Gandhi v. Union of India & Anr.,** reported in AIR 1978 SC 597, **Air India v. Nargesh Meerza & Ors.,** reported in AIR 1981 SC 1829, and **State of Andhra Pradesh & Ors. etc., v. McDowell and Co. & Ors.,** reported in AIR 1996 SC 1627.

7. On the other hand, the learned Advocate General submitted that mere possibility of abuse of provisions of law, per se, does not invalid a legislation and it has to be presumed that the administration will apply the law impartially and application of mind in public interest unless contrary is established, and in that regard, drew our attention to the decisions of the Apex court in **Sushil Kumar Sharma v. Union of India & Ors.,** reported in (2005) 6 SCC 281. He further submitted that there is no promissory estoppel available against the exercise of legislation power of the State and in that regard placed reliance of the decision in the matter of **Hira Tikkoo v. Union Territory, Chandigarh & Ors.,** reported in (2004)6 SCC 765. He also submitted that the question as to whether a statute is ultra vires the Constitution of India on account of unguided or wide power having been conferred upon the Government cannot be determined in vacuum and has to be considered having regard to the text and context of the statute as also the character thereof, and in that regard placed reliance in the decision of the Apex Court in **People's Union for Civil Liberties & Anr. v. Union of India & Ors.,** reported in (2004)2 SCC 476. The learned Advocate General also submitted that

taking into consideration the facts and circumstances as revealed from the petition itself disclose that the the challenge to the statutory provisions as well as to the notification is without any substance and is not maintainable as is filed. The pleadings in the petition themselves disclose consideration of relevant materials and application of mind by the Government before withdrawal of the Regional Plan 2011 and further total failure on the part of the petitioners in revealing any cause for the petitioners to challenge vires of section 17C. Apart from the fact that the contention about unbridled power being bestowed upon the Government on the said provisions of law is totally devoid of substance.

8. In **Smt.Maneka Ghandhi case (supra),** and paragraph 68 of the decision to which attention was drawn, the Apex Court had held that it is possible that in a given case the pith and substance of the State action may deal with a particular fundamental right but its direct inevitable effect may be on another fundamental right and in that case, the State action would have to meet the challenge of the latter fundamental right, and the pith and substance doctrine looks only at the object and subject matter of the State action but in testing the validity of the State

action with reference to fundamental rights, what the Court must consider is the direction and inevitable consequence of the State action. Otherwise, the protection of the fundamental rights would be subtly but surely eroded.

9. In **Nargesh Meerza's case (supra)** the Apex court in paragraph 114 to which our attention was drawn, while reiterating its earlier decision in **State of West Bengal v. Anwar Ali Sarkar,** reported in AIR 1952 SC 75, while dealing with the matter relating to a provision suffering from the vice of excessive delegation of power, it was held that the policy or idea behind the classification should at least be adumbrated, if not stated, so that the Court which has to decide on the constitutionality might be seized of something on which it could base its view about the propriety of the enactment from the standpoint of discrimination or equal protection, and further that any arbitrary division or ridge will render the equal protection clause moribund or lifeless.

10. In **Baldev Raj Chadha v. Union of India & Ors.,** reported in AIR 1981 SC 70, the Apex Court had held that under the guise of 'public interest' if unlimited discretion is regarded acceptable for making

an order premature retirement, it would be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. The said decision was in a case where the issue before the Apex Court was whether the appellant before it was retired and only because it was necessary in the public interest so to do. In that regard, while observing that security of tenure is the condition of efficiency of service and administration to be competent must have servants who are not plagued by uncertainty about tomorrow and when the order issuing compulsory retirement in public interest is sought to be challenged, it was held that its validity depends on its being supported by public interest and the State in that regard must disclose materials so that the Court must be satisfied that the order is not bad for want of any material whatever to which a reasonable man reasonably instructed in the law is sufficient to sustain the grounds of public interest justifying forced retirement of the public servant.

11. In **McDowell's case (supra)**, the Apex Court had held that a law made by the Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the

fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground available for such challenge. If an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clause (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. An enactment cannot be struck down by applying the principle of proportionality when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if

it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks a unreasonable, unnecessary or unwarranted.

12. In **Sushil Kumar Sharma's case (supra)**, it was held that mere possibility of abuse of provision of law does not per se invalidate a legislation and it must be presumed, unless the contrary is proved, that administration and application of a particular law would be done not with an evil eye and unequal hand. While arriving the said proposition of law, the Apex Court had referred to its earlier decision in **A.Thangal Kunju Musaliar v. M. Venkatichalam Potti,** reported in AIR 1956 SC 246. It was further held that from the decided cases in India as well as in the Unites States of America, the principle appears to be well settled that if a statutory provision is otherwise intra vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra vires or unconstitutional and in such cases, "action" and not the "section" may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved.

13. In **Hira Tikkoo's case (supra)**, the Apex Court while reiterating its earlier decision in **M. Ramanatha Pillai v. State of Kerala,** reported in (1973)2 SCC 650, **State of Kerala v. Gwalior Rayon Silk Mfg.(Wvg.) Co.Ltd.,** reported in (1973)2 SCC 713, and in **Jit Ram Shiv Kumar v. State of Haryana,** reported in (1981)1 SCC 11, had ruled that there can be no promissory estoppel against the exercise of legislative power of the State and hence the said doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law.

14. In **People's Union for Civil Liberties's case (supra)**, the Apex Court while dealing with the constitutional validity of Section 18 of the Atomic Energy Act, 1962 on the ground that it gives unguided and uncanalised power to the Central Government, held that the question as to whether a statute is ultra vires the Constitution of India having conferred unguided, uncanalised or wide power cannot be determined in vacuum. It has to be considered having regard to the text and context of the statute as also the character thereof. It deals with a sensitive subject. It was further held that it is well settled

that guidelines for enacting a provision in a statute must be found out from the subject-matter covering the field. For the said purpose, even the preamble of the Statute may be looked into. It was also held that a statute carries with it a presumption of constitutionality. Such a presumption extends also in relation to a law which has been enacted for imposing reasonable restrictions in the fundamental right. A further presumption may also be drawn that the statutory authority would not exercise the power arbitrarily.

15. The first point which arises for consideration is whether Section 17C purports to vest in the Government unguided discretion in the matter of withdrawal of revised regional plan and on that count it is ultra vires the Constitution of India. Section 17C deals with the powers of the government to withdraw the revised regional plan. Perusal of various provisions of the said Act reveals that the legislature in its wisdom has made elaborate provisions for preparation, finalisation and implementation of the revised plan. In other words, the scheme of the said Act discloses a detail policy being laid down for the purpose of preparation and finalisation of the revised regional plan as well as

the guidelines for its implementation. It is settled law that once the policy is laid down by the legislature, it is always permissible to delegate subsidiary and ancillary matter to the executive for proper implementation of the policy, and indeed there is no challenge in that regard in the petition. Limited challenge in the petition is that Section 17C which empowers the government to withdraw the regional plan does not lay down the guidelines for exercise of the said power by the government and that therefore, it is bad in law. If one reads Section 17C, on the face of it, it would be at once clear that the contention sought to be advanced in this regard is totally devoid of substance.

16. Section 17C itself provides that the revised regional plan can be withdrawn by the government provided the government forms its opinion in that regard. In other words, before arriving at a decision to withdraw the revised regional plan, the government has to apply its mind to the fact situation, bearing in mind that the public interest being of paramount importance, exercise of its discretion accordingly and bonafide. On such exercise being done by the government, it can decide to withdraw the revised regional plan. Obviously, Section 17 itself provides

guidelines for exercise of discretionary power of the government as regards the withdrawal of the revised regional plan. Being so, the petitioners are not at all justified in contending that Section 17C gives unfettered and unguided discretion to the government in the matter of withdrawal of revised regional plan or that there are no guidelines provided for exercise of such discretion. Section 17 itself comprises of in-built guidelines for exercise of the discretion by the government in that regard, and hence, the challenge on the ground of absence of guidelines for exercise of power has to fail.

17. The Apex Court in **Sushil Kumar Sharma's case (supra)** had clearly ruled that mere possibility of abuse of a provision of law does not per se invalidate a legislation. It is so because it is always presumed, unless contrary is proved that administration and application of a particular law would be done impartially and bonafide. There is no presumption that the government would abuse its discretion even in cases where such discretionary power is given to the government.

18. The second point for consideration relates to the actual exercise of powers by the authority

consequent to the direction by the government to withdraw the revised regional plan. The challenge is on the ground that the government itself had justified the validity of the revised regional plan in answer to the Writ Petition No.569 of 2006 by filing affidavit dated 11th December, 2006 in that regard. The withdrawal has been notified on 7th February, 2007. According to the petitioners, neither the notification discloses the basis for change in the decision nor there exists any basis except agitation by group of people in Goa against the implementation of the revised regional plan and hence the impugned notification is bad.

19. Perusal of the impugned notification discloses that the government in exercise of powers under Section 17C(1) of the said Act had directed the Chief Town Planner to withdraw the revised regional plan. Obviously, it discloses the decision in terms of Section 17C(1) of the said Act to withdraw the revised regional plan. It is the case of the petitioners themselves that certain Non-Government Organisations as also Religious Institutions under the banner of Goa Bachao Abhiyan had staged the agitation in Goa demanding denotification of the revised regional plan. It is also the case of the petitioners that in the

course of agitation, official functions were disrupted, resorted to extract judicial means, called for and secured resignation of the Town and Country Planning Minister, threatened to paralise functioning of various departments of the State of Gob. Certain religious institutions had also lent their support to the agitation. There was also a challenge thrown to the revised regional plan in Writ Petition No.569 of 2006. Undoubtedly, there was an affidavit filed in reply to the said writ petition justifying the issuance of revised regional plan. The government had nowhere contended that the revised regional plan would be withdrawn or modified. In fact, the process of planning, as disclosed from the scheme of the said Act, is always subject to modification as and when circumstances may demand. Being so, if subsequent to the filing of the affidavit, taking into consideration the agitation by the people of Goa against implementation of the revised regional plan, the consequences thereof, if the Government has taken its decision in that regard bonafide, it could not be said that the notification to that effect is bad in law.

20. It is pertinent to note that the challenge in the petition is firstly to the statutory provision being ultra vires the Constitution of India on the

ground that it gives unguided discretionary powers to the government to withdraw the revised regional plan and secondly to the notification withdrawing the revised regional plan is on the ground that it does not disclose justification for change in the decision from December, 2006 to February, 2007. However, the petitioners themselves have contended that the peoples' opinion being against the implementation of the revised regional plan, the notification for withdrawal has been issued only after such agitation by the people of Goa. The facts disclosed by the petitioners themselves reveal that the Minister incharge of the Department of Goa Town and Country Planning who had revised the regional plan had to resign on the said issue. In the background of these facts and in the absence of challenge to the decision of the Government to withdraw the regional plan, the challenge simplicitor to the notification cannot survive. Though the petitioners have chosen to challenge the vires of Section 17C of the said Act and the notification issued, there is, in fact, no challenge to the decision of the Government withdrawing the revised regional plan. Once the notification ex facie discloses that it was pursuant to the direction issued under Section 17C(1) of the said Act to revise the regional plan, it is obvious

that the direction has been issued in terms of the decision by the Government under the said statutory provision. Yet it is not the case of the petitioners that such decision by the government is either malafide or has been taken in colourable exercise of powers under the said section or that it is not in public interest. The facts disclosed in the petition reveal ground for change, in the decision of the government since 12th December, 2006 in the matter of discontinuation of the revised regional plan.

21. As regards the third ground of challenge, it relates to the principal of promissory estoppel. The contention of the petitioners is that the respondents having held out the representation to the petitioners vide revised regional plan, the petitioners had irretrievably altered their position in the sense that they had applied for development of their properties in terms of the revised regional plan, and hence the respondents are estopped from withdrawing the revised regional plan. Undisputedly, though the petitioners had filed an application for conversion of land and for grant of licence for construction, the petitioners were not granted any permission to carry out any development in their property in accordance with the said application of the petitioners. Mere filing of

an application cannot create any vested right in favour of the petitioners to contend that they have altered their position based on the revised regional plan. In any case, existence of the revised regional plan would depend upon the decision of the Government in terms of Section 17C(1) of the said Act. Mere filing of an application for licence does not amount to change in the position or alter the position merely because the petitioners have planned to develop the properties in terms of the revised regional plan without taking any further step in that regard. Mere filing of an application for licence for construction and drawing of a plan would not amount to creating vested right in favour of the petitioners so as to insist that in case of withdrawal of the revised regional plan, it would amount to prejudice to the petitioners or that the respondents are not entitled to exercise their powers in terms of Section 17C(1) of the said Act on the ground of applicability of the doctrine of promissory estoppel. In fact, the said doctrine has no application to the case in hand.

22. As regards the fourth ground of challenge which pertains to consequences of the impugned notification imposing unreasonable restrictions upon the petitioners as regards the development of their

properties and that it violates Article 19(1)(g) of the Constitution of India, it is pertinent to note that the right to property is not a fundamental right. Albeit, no one can be deprived of his property save by authority of law. The impugned notification nowhere deals with the deprivation of any proprietory right of any citizen in Goa. It merely speaks of withdrawal of revised regional plan. Obviously, in terms of Section 17C(3) of the said Act, on and from the date of withdrawal of the revised regional plan all development programmes would be in terms of the earlier existing regional plan. In other words, the development of the property is not prohibited by merely withdrawing the revised regional plan. It has only brought into force the regional plan which was in existence prior to 2006 for the purpose of development of the properties in Goa on withdrawal of the revised regional plan. The petitioners are not forbidden from developing the properties in terms of the existing regional plan. Hence, there is absolutely no violation of Article 19(1)(g) of the Constitution so far as the petitioners are concerned. It is well settled law that the freedom assured under Article 19(1)(g) of the Constitution is always subject to reasonable restrictions and the standard of reasonableness can vary depending upon the

circumstances in relation to which the statutory provision is brought into force. Being so, there is absolutely no substance in the said ground of challenge also.

23. The fact that the public interest has been taken into consideration while arriving at the decision to withdraw the revised regional plan need not be stated in so many words in the notification published in that regard. It would depend upon the facts of each case. When the petition itself ex facie discloses the facts which could reveal consideration of this aspect by the Government while arriving at the decision to withdraw the revised regional plan, merely because that is not reflected in the notification issued, that would not be sufficient to call for interference in writ jurisdiction. Considering the facts disclosed in the petition, there is no substance in the contention that the Government has arbitrarily withdrawn the revised regional plan, nor the decision in that regard can be said to be in disregard to the public interest. On the contrary, the facts disclosed in the petition clearly justify the action taken by the Government in the nature of withdrawal of the revised regional plan. Neither Section 17C(1) gives uncontrolled and unguided powers to withdraw the

revised regional plan nor the exercise in terms of the provisions of law can be said to be in arbitrary manner and the decision in that regard cannot be said to be contrary to the public interest.

24. For the reasons stated above and as no other grounds are canvassed to challenge the impugned statutory provisions and the impugned notification, there is no substance in the petition. The petition accordingly fails and is hereby dismissed. No order as to costs.

(R.M.S.KHANDEPARKAR, J)

(R.S.MOHITE, J)